

# NRDC

February 21, 2020

**VIA ECF**

The Honorable Denise L. Cote  
United States District Judge  
United States Courthouse  
500 Pearl Street, Room 1910  
New York, NY 10007

Re: *Natural Resources Defense Council v. Wheeler*, 19 Civ. 5174 (DLC)

Dear Judge Cote:

We represent Plaintiff Natural Resources Defense Council in this case concerning a U.S. Environmental Protection Agency (EPA) directive providing, in part, that “no member of an EPA federal advisory committee be currently in receipt of EPA grants” (“the Directive”). NRDC filed this action on June 3, 2019, alleging that the Directive is arbitrary and capricious under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and was issued without complying with the APA’s notice-and-comment requirements. The EPA moved to dismiss the complaint under Fed. R. Civ. P. Rules 12(b)(1) and 12(b)(6), or in the alternative, for summary judgment. NRDC cross-moved for summary judgment.

On February 10, 2020, this Court granted NRDC’s motion for summary judgment, finding the Directive arbitrary and capricious. *See* ECF No. 40. The parties conferred pursuant to the Court’s order, ECF No. 41, but were unable to agree on a proposed order terminating this case. The parties jointly propose that the remaining issue—the appropriate remedy for EPA’s APA violations—be resolved through briefing pursuant to the schedule proposed below:

- NRDC will submit an opening brief of no more than five pages, in letter brief format, by February 28, 2020.
- EPA will submit an opposition brief of no more than five pages, in letter brief format, by March 13, 2020.

**NATURAL RESOURCES DEFENSE COUNCIL**

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- NRDC will submit an optional reply brief of no more than three pages, in letter brief format, by March 20, 2020.

We thank the Court for its consideration of this letter.

Respectfully,

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cc: All counsel of record (via ECF)